

UNITED STATES-ISRAEL FREE TRADE AREA

MAY 6, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 2268]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2268) to approve and implement the Free Trade Area Agreement between the United States and Israel, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND AND PURPOSE

AUTHORIZATION AND IMPLEMENTATION OF THE FREE TRADE AREA AGREEMENT BETWEEN THE UNITED STATES AND ISRAEL

Title IV of the Trade and Tariff Act of 1984 (Public Law 98-573) authorized the President to conclude a bilateral tariff agreement with Israel and contains the basic provisions of U.S. law necessary to administer such an agreement. Section 401 of that Act amended section 102 of the Trade Act of 1974 (Public Law 93-618), the basic authority of the President to enter into trade agreements on non-tariff barriers until January 3, 1988, to include authority to enter into bilateral agreements with foreign countries to eliminate or reduce tariffs if certain procedural requirements are met. Any trade agreements entered into under the section 102 authority are subject to approval of implementing legislation under the "fast track" procedures of section 151 of the Trade Act of 1974. These procedures automatically discharge committees of jurisdiction from consideration of the implementing bill after 45 legislative days, provide for floor action within 15 legislative days thereafter, and permit no amendments to the bill after its introduction. Bilateral

tariff agreements with Israel were exempted from the normal section 102 requirement of a minimum 90-day advance notice and consultation with Congressional committees of jurisdiction prior to the President's entry into a trade agreement.

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations with a view to concluding a U.S.-Israel free trade area eliminating tariffs and other trade-distorting practices between the two countries. The Office of the U.S. Trade Representative headed the negotiations for the United States from their beginning in mid-January 1984. As input to the negotiations, the President requested advice from the United States International Trade Commission (ITC) on the probable economic effects on U.S. producers of duty elimination on imports from Israel. Congressional and private sector advisers were also consulted during the negotiations.

The negotiations concluded on February 26, 1985. On April 22, Ambassador William E. Brock, on behalf of the United States, and Minister Ariel Sharon, on behalf of Israel, signed the Agreement on the Establishment of a Free Trade Area Between the Government of the United States of America and the Government of Israel. In accordance with section 102(e) procedures under the Trade Act of 1974, the President transmitted a Message to the Congress on April 29, containing the text of the Agreement, together with a draft of the implementing bill, a statement of administrative action, and an explanation of the effects on existing law (House Document 99-61, April 29, 1985). On the same day, H.R. 2268, to approve and implement the Free Trade Area Agreement between the United States and Israel, was introduced by request in accordance with section 151(c)(1) of the Trade Act.

A free trade area is an arrangement between two or more countries in which each removes tariff and other restrictions on trade with third countries. Article XXIV of the General Agreement on Tariffs and Trade (GATT) permits free trade area or customs unions as a deviation from the non-discrimination, most-favored-nation (MFN) principle of Article I if the agreement meets certain criteria. GATT-approved free trade areas (1) must eliminate duties and other restrictive measures on "substantially all" trade between the parties; and (2) duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than the parties had in place prior to the agreement. An "interim agreement" can qualify under Article XXIV if it contains a plan and schedule for formation of the free trade area "within a reasonable length of time." Waivers may be sought under GATT provisions for free trade area proposals which do not meet the requirements.

The Free Trade Area Agreement with Israel is the first such arrangement entered into by the United States with any country aside from the bilateral free trade arrangement with Canada in the automotive sector only. The Caribbean Basin Initiative authorized by the Caribbean Basin Economic Recovery Act (Public Law 98-67) provides one-way duty-free entry into the United States.

TRADE BENEFITS UNDER THE AGREEMENT

The United States is Israel's major trading partner, providing a market for about 25 percent of Israel's total exports and supplying about 20 percent of its total non-military imports. The United States has enjoyed a trade surplus historically and consistently with Israel despite the fact that a substantially larger proportion of U.S. exports to Israel are subject to tariff protection than Israel exports to the United States. In 1982, the base year used for the trade agreement negotiations, the U.S. trade surplus with Israel was about \$0.4 billion, excluding military goods.

Israel currently imports from all sources about \$8 billion worth of goods and \$6 billion worth of services, excluding imports for military use. U.S. total non-military exports to Israel in 1982 were about \$1.5 billion. Based on 1982 data, about 60 percent of total U.S. exports to Israel currently enter duty-free, but only 18 percent are MFN bound or permanently duty-free. Over 40 percent of total U.S. nonmilitary exports to Israel are currently dutiable at an average duty exceeding 10 percent. The major U.S. dutiable exports to Israel are motor vehicles, electrical goods and apparatus, kraft-liner, synthetic yarns, automatic data processing machines, fasteners, medical apparatus, and controlling instruments.

In 1975 the European Communities (EC) and Israel established a bilateral free trade area on industrial and certain agricultural products. After the full implementation of the EC-Israel free trade area in 1989, U.S. dutiable exports in the absence of the U.S.-Israel Free Trade Area Agreement would face an average tariff disadvantage of about 10.5 percent in relation to European exports to Israel entering duty-free. Already U.S. products are facing an increasing disadvantage in the Israeli market as the EC-Israel free trade area is completed.

Over the past five years, U.S. imports from Israel have increased more than 70 percent from \$749 million in 1979 to \$1.2 billion in 1982. Despite this growth, however, U.S. imports from Israel constitute only about 0.5 percent of total U.S. imports. About \$1 billion, or 90 percent of U.S. imports from Israel currently enter duty-free either on an MFN basis (55 percent) or under the Generalized System of Preferences (GSP) (35 percent). Of the remaining 10 percent of total imports which are dutiable, about 40 percent consists of agricultural products (\$49 million in 1982). Imports from Israel subject to duty tend to be high tariff items such as textiles and apparel, jewelry, citrus, handmade glassware, flowers, processed tomato products, olives, footwear, and bromine chemicals.

The main element of the Agreement is the reciprocal elimination of tariffs on all products traded between the two countries by January 1, 1995. Duties will be eliminated in phases over the ten years, depending on the relative import sensitivity of the particular articles for domestic producers. The negotiations focused on the trade which is legally dutiable between the two countries: for the United States the value of trade to be permanently liberalized under the Agreement is \$515 million or 45 percent of total imports from Israel (based on 1982 data), of which about \$404 million covers items already entering duty-free on a temporary basis under the GSP; for Israel the value of 1982 trade to be permanently liberal-

ized under the Agreement is \$1,278 million or 82 percent of total imports from the United States, including duty-free imports on an unbound basis.

The economic advantage to the United States of a free trade area is elimination of relatively high tariff barriers on nearly one-half of U.S. exports to Israel and removal of the EC duty-free competitive advantage in the Israeli market, particularly in industrial products which directly compete with the EC. In addition, the United States obtained Israel's commitment to adhere to GATT obligations on subsidies and to phase out its export subsidies on non-primary products. The Agreement also limits Israel's use of other nontariff practices that presently restrict U.S. trade or that potentially could be used to replace tariff protection. While U.S. duties on most imports from Israel would be eliminated immediately, the gradual reduction of duties on more sensitive items provides domestic industries a period to adjust to any increased Israeli import competition.

The main benefits of a free trade area to Israel as a small-sized economy are duty-free treatment for products not presently covered by GSP and secure, predictable duty-free treatment on items currently under GSP but subject to changes in status restoring normal rates of duty. The Agreement ensures Israel free access to a second major market, thereby encouraging investment, industrial development, and an improved balance-of-payments position.

UNITED STATES-ISRAEL NONMILITARY TRADE BALANCE AND COVERAGE OF FREE TRADE AREA

[1982 data, dollar amounts in thousands]

	Amount	Percent
U.S. EXPORTS TO ISRAEL		
Total of U.S. exports.....	\$1,546.7	
Bound MFN duty free	-269.2	18.0
Total, U.S. exports under negotiation (dutiable plus unbound free)	1,277.5	82.0
Stage:		
1. Immediate.....	670.8	52.5
2. 1989.....	402.8	31.5
3. 1995.....	39.5	3.0
4. 5-yr. freeze/1995.....	164.4	12.8
Total.....	1,277.5	100.0
U.S. IMPORTS FROM ISRAEL		
Total U.S. imports.....	1,162.1	
MFN duty free.....	-647.0	55.0
Total, U.S. imports under negotiation (dutiable plus GSP)	515.1	45.0
GSP duty free	(403.5)	
Stage:		
1. Immediate.....	414.7	80.4
2. 1989.....	27.8	5.5
3. 1995.....	4.7	.9
4. 5-yr. freeze/1995.....	67.9	13.6
Total.....	515.1	100.0

**SUMMARY OF H.R. 2268, TO APPROVE AND IMPLEMENT THE FREE
TRADE AREA AGREEMENT BETWEEN THE UNITED STATES AND ISRAEL**

SECTION 1. SHORT TITLE

The Act may be cited as the "United States-Israel Free Trade Area Implementation Act of 1985."

SECTION 2. PURPOSES

Section 2 describes the purposes of the Act, namely to approve and implement the agreement establishing a United States-Israel free trade area, to strengthen and develop economic relations between the United States and Israel, and to establish free trade between the two nations.

SECTION 3. APPROVAL OF FREE TRADE AREA AGREEMENT

Under section 3, Congress approves the Agreement on the Establishment of a Free Trade Area between the United States and Israel and the statement of administrative action, pursuant to the trade agreement authority and expedited legislative approval procedures under sections 102 and 151 of the Trade Act of 1974.

SECTION 4. PROCLAMATION AUTHORITY

Section 4 authorizes the President to proclaim modifications or continuance of existing duties or duty-free treatment to implement the Agreement, except no modifications of any duty on certain import-sensitive articles can take effect prior to January 1, 1995.

Section 4 also authorizes the President to withdraw, suspend, or modify any duty or duty-free treatment or proclaim additional duties necessary to maintain the general level of concessions under the Agreement.

SECTION 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW

Section 5 stipulates that U.S. statutes prevail if a provision of the Agreement is in conflict. Initial implementing regulations must be prescribed within one year. No private rights of action or remedies are created by the Agreement or the Act.

Section 5 also provides that the expedited legislative approval procedures shall apply to subsequent changes in U.S. statutes to implement requirements, amendments, or recommendations under the Agreement. Such procedures can apply to legislation authorizing reductions or elimination of duties on certain import-sensitive articles only if the reductions take effect gradually beginning after December 31, 1989, and elimination does not occur prior to January 1, 1995.

SECTION 6. TERMINATION

Section 6 waives the usual requirement that trade agreements are subject to termination or withdrawal within 3 years.

SECTION 7. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN ISRAELI PRODUCTS

Section 7 lowers the threshold contract value from SDR 150,000 (about \$156,000) to \$50,000 or more on which the President can waive Buy American restrictions on eligible products or services from Israel presently covered by the GATT Agreement on Government Procurement.

SECTION 8. TECHNICAL AMENDMENTS

Section 8 contains various technical amendments to the Trade and Tariff Act of 1984 and the Trade Act of 1974 related to the Agreement authority and implementation.

SUMMARY OF FREE TRADE AREA AGREEMENT BETWEEN THE UNITED STATES AND ISRAEL

The Agreement on Establishment of a Free Trade Area Between the Government of the United States and the Government of Israel consists of a Preamble, twenty-three separate Articles, and four Annexes, which are an integral part of the Agreement. The Agreement provides for the elimination of tariffs and other restrictive regulations of commerce on trade between the two countries, as authorized by provisions for free trade areas under Article XXIV of the General Agreement on Tariffs and Trade.

The Agreement is an adjunct to existing multilateral obligations of both parties under the GATT and relies upon the GATT framework. As stated under Article 3 of the Agreement, rights and obligations in existing bilateral and multilateral agreements, such as GATT provisions, would continue to apply to U.S.-Israeli trade relations unless specifically modified by the terms of the Agreement. In other words, a procedure authorized by the GATT may be modified by a provision of the Agreement. However, if the Agreement does not address an issue, the relevant GATT provision would apply. For example, since the Agreement does not alter existing administration of antidumping and countervailing duty laws, there is no specific provision on these laws in the Agreement. Their application would continue in force consistent with GATT Article VI and section 406 of the Trade and Tariff Act of 1984. Certain provisions of the Agreement modify existing GATT rights and obligations; other provisions create new bilateral rights and obligations.

TRADE RESTRICTIONS

The Agreement addresses the principal bilateral trade barriers as follows:

Establishment of a free trade area

Article 1 establishes a free trade area between the United States and Israel, committing both governments to eliminate duties and other restrictive regulations of commerce affecting their bilateral trade. Annexes 1 and 2 contain the schedules of phased in duty reductions by the United States and Israel on each individual tariff item, to be completed in ten years with the elimination of duties on

all articles by January 1, 1995. The U.S. schedule under Annex 1 consists of four categories:

1. Elimination of some duties effective September 1, 1985;
2. Elimination of duties on some sensitive products in three stages of tariff reductions by January 1, 1989;
3. Elimination of duties on some sensitive products in eight stages of tariff reductions over ten years by January 1, 1995;
4. For products found by the U.S. International Trade Commission to be particularly import sensitive, no duty reductions for five years until January 1, 1990, with rates of duty to be applied between January 1, 1990 and duty elimination on January 1, 1995 to be determined after consultations with Israel.

New restrictions on trade

Article 4 prohibits the introduction of new duties or quantitative restrictions in bilateral trade unless they are permitted by the Agreement or by the GATT.

Health

Article 9 requires the parties to review their veterinary and plant health rules to insure nondiscrimination and not undue trade obstruction, to consult on any agricultural trade difficulties, and to establish a Joint Committee working group to consider these matters.

Infant industry

Article 10 limits Israel's right under GATT as a developing country to apply duties to protect infant industries. If necessary to develop "new processing industries," Israel may increase or reintroduce duties up to a maximum 20 percentage points on a maximum 10 percent of 1984 U.S. exports to Israel after Joint Committee consultation through December 31, 1990, and its agreement thereafter. Such tariffs must be reduced at least 5 percent annually 24 months after imposition and eliminated by January 1, 1995.

Balance-of-payments (BOP)

Article 11 authorizes the application by either party of temporary restrictions in serious BOP situations but limits such measures in the form of quantitative restrictions to a maximum 300 days and in the form of import surcharges of import deposits to 150 days unless extended by legislation for additional 150-day periods. These limitations are more restrictive than GATT BOP provisions under Articles XII and XVIII.

Licensing

Article 12 prohibits the imposition of import licensing requirements unless licenses are automatically approved or are necessary to administer quantitative or other restrictions consistent with the Agreement or the GATT. Parties are required to provide notice and justification for any license denial within 60 days, to respond to inquiries within 30 days, and to exchange lists of items subject to license. These procedures are more restrictive than those contained in the GATT Agreement on Import Licensing Procedures.

Trade-related performance requirements

Article 13 prohibits the imposition of export or domestic purchase performance requirements on investment.

Intellectual property

Article 14 reaffirms existing bilateral obligations on intellectual property rights, including national and most-favored-nation treatment.

Government procurement

Article 15 requires both parties to waive their Buy National restrictions on government agency purchases with a contract value of \$50,000 or more of articles or services presently covered by the GATT Agreement on Government Procurement. Israel will also include non-military purchases by its Ministry of Defense, which are not currently covered by the GATT Agreement, and relax its offset requirements on all civilian agency procurement as set forth in the statement of administrative action. Priority consideration would be given to amending the Agreement if the coverage of the GATT Agreement is broadened.

Trade in services

Under Article 16 the parties recognize the need to minimize restrictions on bilateral services trade and to develop means for cooperation, pursuant to a Declaration on Trade in Services containing non-legally binding principles (e.g., national treatment).

Commitment on subsidies

Annex 4 of the Agreement contains commitments by the Government of Israel (1) to sign the GATT Agreement on Subsidies and Countervailing Duties no later than the effective date of the Free Trade Area Agreement; and (2) with respect to industrial goods and processed agricultural products, not to institute new export subsidy programs, not to increase subsidies in these programs above July 11, 1984 levels, and to eliminate the subsidy elements in its four major programs for financing or processing exports within a maximum of six years.

In return, Israel upon its accession to the GATT Agreement, will become a "country under the Agreement" under section 701(b) of the Tariff Act of 1930 and thereby receive the material injury test under the U.S. countervailing duty law on dutiable imports; the test already applies to duty-free imports from Israel. The test will be applied prospectively, not to existing countervailing duty orders.

SAFEGUARD PROVISIONS

The Agreement contains various articles to permit import safeguard measures under certain circumstances and rules of origin to ensure that only products of the United States and Israel receive the benefits of the free trade area.

Relief from injury caused by import competition

Article 5 requires consultation before a party takes import relief actions. Article 5 also prohibits suspension of the reduction or

elimination of any duty under the Agreement as the sole relief action unless serious injury to the domestic industry results from such reduction or elimination, and provides that imports of the other party may be excepted from the relief action if they are not a substantial cause of the serious injury.

These provisions are consistent with section 403 of the Trade and Tariff Act of 1984 as they apply import relief measures under sections 201-203 of the Trade Act of 1974 to imports from Israel under the Agreement. Emergency relief procedures under section 404 of the Trade and Tariff Act also apply to imports of agricultural perishable products from Israel.

Import restrictions on agriculture

Article 6 authorizes import restrictions other than customs duties to be maintained based on agricultural policy considerations.

General and security exceptions

Article 7 incorporates the general and national security exceptions under GATT Articles XX and XXI as part of the Agreement.

Special exception for Kashruth

Article 8 does not preclude the adoption or enforcement of prohibitions on religious or ritual grounds if applied on the basis of national treatment.

Specific duties

Article 20 permits either party to increase its specific duties to maintain their value if their currency decreases by more than 20 percent. This provision applies a more precise and modern standard than in GATT Article II.

Rules of origin

Annex 3 requires that articles meet certain rules of origin in order to be eligible for preferential duty treatment under the Agreement, similar to such requirements to qualify for duty-free treatment under the Generalized System of Preferences and the Caribbean Basin Initiative. These rules require that an eligible article from Israel (1) be wholly the growth, product, or manufacture of Israel or "a new or different article" grown, produced, or manufactured in Israel (i.e., substantially transformed and not a mere pass-through operation); (2) be imported directly from Israel; and (3) contains a minimum 35 percent local Israel content of which up to 15 percent may be U.S. content.

These rules are fully consistent with the requirements under section 402 of the Trade and Tariff Act of 1984. The statement of administrative action sets forth the interpretation of these rules and the documentation required. Existing regulations on rules of origin with respect to textile and apparel imports would continue to apply to Israel as well as obligations and mechanisms under the Multi-fiber Arrangement.

ADMINISTRATIVE PROVISIONS

Joint committee; notice and consultation; dispute settlement

Article 17-19 establish a Joint Committee to meet at least annually to review the functioning of the Agreement, establish notice and consultation requirements before either party takes any actions affecting bilateral trade or reducing trade barriers to third countries, and provide for non-binding panels to assist in the settlement of disputes not resolved through consultations or by the Joint Committee.

Nomenclature changes

Article 21 requires prior notice of any tariff schedule changes and preservation of the balance of tariff concessions if there are major nomenclature revisions.

Annexes; entry into force; termination

Articles 2, 22, and 23 make the Annexes an integral part of the Agreement, provide for entry into force of the Agreement, and for its termination after 12 months written notice.

OUTLINE OF UNITED STATES-ISRAEL FREE TRADE AREA AGREEMENT

Preamble

Sets out aims of both nations in entering Free Trade Area (FTA).

Article 1

Establishes FTA, consistent with GATT Article XXIV.

Article 2

Sets out organization of Annexes to the Agreement:

- Annex 1: Duty treatment of products of Israel;
- Annex 2: Duty treatment of products of the U.S.;
- Annex 3: Rules of origin; and
- Annex 4: Israel's commitment on Subsidies.

NOTE.—All four annexes are integral parts of Agreement.

Article 3

Describes relationship of this Agreement with other existing agreements, specifically the GATT and U.S.-Israel FCN treaty.

Article 4

Restricts the right of either nation to impose new restrictions on the trade of the other, unless permitted by this Agreement or by the GATT.

Article 5

Refers to the taking of actions by either nation to provide relief to a domestic industry seriously injured or threatened with serious injury by the increased importation of a product.

Article 6

Provides that import restrictions may be maintained by both nations when based on agricultural policy considerations.

Article 7

Incorporates GATT Article XX (General Exceptions) and Article XXI (Security Exceptions) into the Agreement.

Article 8

Provides a special exception for trade measures maintained by either nation relating to religious or ritual prohibitions, i.e. Kosher restrictions.

Article 9

Provides a framework for the resolution of problems relating specifically to veterinary and plant health matters.

Article 10

Allows Israel to impose measures to protect new industries until 1995, with certain restrictions.

Article 11

Provides restrictions on both nations in the application of measures for balance of payments reasons.

Article 12

Provides that import licensing maintained by both nations must be automatic or justified by this Agreement or GATT.

Article 13

Restricts the use of export requirements as a condition of establishment and local purchases requirements as a condition for receiving governmental incentives.

Article 14

Reaffirms both nations' obligations under bilateral and multilateral agreements relating to intellectual property rights.

Article 15

Provides for the steps both nations will take as they endeavor to eliminate all restrictions relating to government procurement.

Article 16

Acknowledges the importance both nations place on trade in services and refers to a separate Declaration to be made by them.

Article 17

Establishes a Joint Committee to supervise the proper implementation of the Agreement and review the trade relationship between the nations.

Article 18

Provides procedures for notice and consultation.

Article 19

Establishes a dispute settlement mechanism for the resolution of disagreements under this Agreement.

Article 20

Provides that each nation may increase the value of its specific duties when the value of their currency decreases more than twenty percent, in order to maintain the same duty levels as set out in Annexes 1 and 2.

Article 21

Provides that changes in each nation's tariffs schedules may be made if the tariff rates in Annexes 1 and 2 are not adversely affected or, if a change is major, the balance of tariff concessions is maintained.

Article 22

Provides for entry into force of Agreement.

Article 23

Provides for termination of Agreements.

Signature

Annex 1.—Schedule of duty reductions for products of Israel entering the United States.

Annex 2.—Schedule of duty reductions for products of the United States entering Israel.

Annex 3.—Rules of origin applicable to this Agreement.

Annex 4.—Letter to Ambassador Brock from Minister Sharon containing the committee on subsidies made by Israel to the United States.

COMMITTEE ACTION

Section 401 of the Trade and Tariff Act of 1984 waived the requirement under section 102 of the Trade Act of 1974 that the President notify the Congress at least 90 days in advance of his intention to enter into a trade agreement with respect to a bilateral tariff agreement with Israel. However, informal consultations between the Committee on Ways and Means, the Senate Committee on Finance, and the Office of the U.S. Trade Representative (USTR) on matters relating to implementation of the Agreement and changes necessary or appropriate in U.S. law took place as if the 90-day statutory requirement had not been waived. Review of the Agreement before it was signed and a full opportunity to achieve consensus between the two Committees and the Administration on the substance and form of implementing legislation in advance of its formal transmittal by the President was considered essential by the two Committees since the bill is unamendable once introduced.

The procedures and timing for review of the proposed Agreement and consultations on draft implementing legislation were agreed upon by the two Committees in consultation with USTR and transmitted to Ambassador William E. Brock in a letter dated February 20, 1985.

On February 28, the Committee held an informal consultation with Ambassador Brock in executive session on the contents of the

Agreement. The Committee held a public hearing on the proposed Agreement and implementing legislation on March 6.

On March 28, the Committee held an informal nonofficial markup session on a draft implementing bill proposed by the Administration, adopting one amendment relating to authority of the President to proclaim the elimination of duties on certain import sensitive products, and appointed conferees to resolve differences on this authority with conferees from the Senate Committee on Finance. Following informal consultations, the conferees of the two Committees transmitted to Ambassador Brock in a letter dated April 4 the text of draft implementing legislation that would be acceptable to the two Committees.

On April 29, the President transmitted a Message to the Congress including a draft implementing bill identical to the text transmitted by the two Committees on April 4. That bill was introduced by request on April 29 as H.R. 2268.

On May 2, the Committee on Ways and Means ordered H.R. 2268 favorably reported by voice vote.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

Title IV of the Trade and Tariff Act of 1984 authorized the President to enter into a bilateral trade agreement with Israel to establish a free trade area, subject to Congressional approval of implementing legislation, and contains most of the provisions of U.S. law applicable to its operation, such as rule-of-origin requirements, application of existing laws providing import relief and unfair trade practice remedies, and emergency import relief procedures for agricultural perishable products. The main purpose of H.R. 2268, as ordered reported by the Committee on Ways and Means, is to approve the Free Trade Area Agreement between the United States and Israel and to provide the President authorities necessary to implement U.S. international obligations under that Agreement into domestic law.

SECTION 1. SHORT TITLE

The short title for citing this act is the "United States-Israel Free Trade Area Implementation Act of 1985."

SECTION 2. PURPOSES

Section 2 of H.R. 2268 sets forth the purposes of the act. These purposes are (1) to approve and implement the agreement on the establishment of a free trade area between the United States and Israel negotiated under the trade agreement authority of section 102 of the Trade Act of 1974; (2) to strengthen and develop economic relations between the United States and Israel for their mutual benefit; and (3) to establish free trade between the two nations through the removal of trade barriers.

SECTION 3. APPROVAL OF A FREE TRADE AREA AGREEMENT

Under section 3 of H.R. 2268, pursuant to sections 102 and 151 of the Trade Act of 1974, Congress approves the agreement on the Es-

tablishment of a Free Trade Area Between the Government of the United States of America and the Government of Israel entered into on April 22, 1985, and submitted to the Congress on April 29, 1985, and the statement of administrative action proposed to implement the Agreement submitted to the Congress on April 29, 1985.

Section 102(b)(1) of the Trade Act of 1974, as amended by section 401 of the Trade and Tariff Act of 1984, grants authority to the President until January 3, 1988, to enter into trade agreements with Israel providing for the elimination or reduction of U.S. duties. Any such bilateral tariff agreement and accompanying statement of administrative action are subject to approval by Congress in implementing legislation considered under the expedited procedures of section 151 of the Trade Act of 1974. These procedures permit no amendment of the implementing bill once it is submitted by the President and introduced.

The Committee believes that approval of the Agreement as submitted is in the U.S. national interest for the reasons cited in the President's Message transmitting the Agreement on April 29, 1985, and described above under the Background and Purpose section. However, approval of an agreement establishing a free trade area with Israel should not be construed as constituting Committee approval of additional such agreements with other countries, nor should the schedule for elimination of duties on individual articles imported from Israel set a precedent for the treatment of such articles under any future free trade area agreements with other countries. Section 102 of the Trade Act of 1974, as amended by section 401 of the Trade and Tariff Act of 1984, provides a procedure for any future bilateral tariff agreements, each of which should be considered for negotiation and approval on their individual merits.

SECTION 4. PROCLAMATION AUTHORITY

Section 4 of H.R. 2268 provides the President authority to proclaim the schedule of duty reductions set forth in Annex 1 of the Agreement with respect to imports of articles from Israel. The President does not have tariff proclamation authority under present law to fulfill U.S. international obligations under the Agreement to establish a free trade area with Israel.

Subsection (a) authorizes the President to proclaim such modifications or continuance of any existing U.S. duty, continuance of existing duty-free or excise treatment, or such additional duties as he determines required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in Annex 1 of the Agreement, except as provided in subsection (c). Subsection (c) prohibits the modification of any duty on any article on the so-called "import sensitive" list under paragraph (4) of Annex 1 of the Agreement to take effect prior to January 1, 1995. The U.S. International Trade Commission in its report to the President on the Probable Economic Effect of Providing Duty Free Treatment for Imports from Israel (Investigation 332-180, May 1984), identified seven categories of articles on which duty-free treatment of imports from Israel would have a potentially significant adverse impact on U.S. producers: processed tomato products, certain olives, dehydrat-

ed onions and garlic, citrus fruit juices, cut roses, certain bromine chemicals, and certain gold jewelry.

The Agreement itself provides for a "freeze" of the duties on these import sensitive items listed in paragraph (4) of Annex 1 for the first five years until January 1, 1990; rates applied in the second five years until duty elimination effective January 1, 1995, would be determined after consultations with Israel. The bill provides the President the proclamation authority necessary to fulfill obligations under the Agreement to eliminate rates of duty on all products by January 1, 1995, without the need for further Congressional approval or legislative authority. However, the bill provides a full ten-year period for adjustment by U.S. industries to duty elimination on imports from Israel of the most sensitive articles. Any duty reductions on these articles prior to January 1, 1995, can take place only if Congress passes new legislation providing such proclamation authority.

Section 102(b)(2)(B) of the Trade Act of 1974 as added by section 401(a)(2) of the Trade and Tariff Act of 1984 provided that any trade agreement with Israel entered into under section 102(b)(1) authority providing for the reduction or elimination of U.S. duties must take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference has been challenged by the United States in the GATT under the authority of section 301 of the Trade Act of 1974. The U.S. citrus industry filed a section 301 petition in 1976 concerning the displacement of U.S. citrus exports to Europe as a result of European Community preferential tariff arrangements with Israel and other Mediterranean countries. The United States finally won a GATT panel finding last December that U.S. exports of oranges and lemons have been adversely affected by EC preferences and a recommendation that the EC reduce its tariff on these items. However, so far the EC is unwilling for the GATT Council to adopt the panel's report.

Under the Agreement, duties on various citrus products will be reduced and eliminated over different periods of time ranging from immediate elimination to no change in existing duties at least for the first five years, depending on the degree of potential adverse impact on U.S. producers of duty elimination on imports from Israel. The Committee believes, however, that the U.S. section 301 case on citrus should continue to be pursued in the GATT and that the United States should obtain some specific relief for the domestic citrus industry for the damage that the EC has caused by their special preferential tariff arrangement with Israel. As a matter of general principle, it is important that the United States continue to pursue this case upheld by a GATT panel and preserve our GATT rights in order not to make a mockery of the section 301 and GATT dispute settlement process.

Subsection (b) provides the President authority to proclaim the withdrawal, suspension, modification, or continuance of any duty, continuance of existing duty-free or excise treatment, or such additional duties as he determines required or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided by the Agreement. This authority would enable the United States to gain self-compensation or

to retaliate in the event of a trade dispute with Israel as the Agreement evolves. This authority is also sufficient for the President to make necessary changes in the Tariff Schedules of the United States if the United States adopts the Harmonized Commodity Description and Coding System.

SECTION 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW

Section 5 of H.R. 2268 contains several provisions concerning the relationship of the Agreement to existing U.S. statutes and the legislative procedures for considering any future changes in U.S. laws to implement the Agreement.

Subsection (a) provides that Title IV of the Trade Act of 1974 and any other U.S. statute prevails if in conflict with any provision of the Agreement. The Agreement is not self-executing and does not have independent effect under U.S. law. It was negotiated to be fully consistent with the provisions of the authorizing legislation under Title IV of the Trade and Tariff Act of 1984 as well as with the GATT. For example, existing laws to provide relief from increased import competition as well as antidumping, countervailing duty, and other laws to remedy unfair trade practices would still apply to imports from Israel under the Agreement. The implementing Act and accompanying statement of administrative action are fully consistent with the Agreement and permit the United States to carry out all of its obligations under the Agreement.

Subsection (b) requires initial regulations necessary or appropriate to implement the Agreement to be issued within one year after the date the Agreement enters into force. As indicated in the statement of administrative action, initial regulations to implement the rules of origin under the Agreement and the emergency import relief procedures for agricultural perishables will be promulgated within six months, and issued on the government procurement provisions within one year.

Subsection (c) applies the special requirements and procedures of section 3(c) of the Trade Agreement Act of 1979 (Public Law 96-39) to Congressional approval of any amendment, repeal, or enactment of a U.S. statute implementing a requirement of, amendment to, or recommendation under the Agreement subsequent to enactment of this Act. These procedures could be used, for example, to conform U.S. law to any future changes that might be made in the Agreement.

Section 3(c) requires the President, at least 30 days before submitting a draft bill and statement of any proposed administrative action to implement the requirement, amendment, or recommendation, to consult with the House Committee on Ways and Means and Senate Committee on Finance, as well as with any other House or Senate committee with jurisdiction on all matters relating to implementation. No such amendment can enter into force for the United States and no requirement, amendment, or recommendation can be implemented under U.S. law unless procedural requirements similar to those under section 102(e) of the Trade Act of 1974 are met.

The bill submitted by the President is subject to consideration by the Congress under the same "fast track" rules of section 151 of

the Trade Act of 1974 as apply to the consideration of the Agreement itself and this implementing Act. Each committee of jurisdiction is subject to automatic discharge after 45 legislative days, followed by 15 legislative days for floor action; no amendments are permitted in the implementing bill following its introduction.

As provided under subsection (c)(2), these "fast track" procedures may apply to legislation proposed to reduce or eliminate duties on the import sensitive articles listed in paragraph (4) of Annex 1 only if the following conditions are met:

(1) Any duty reduction provided in the bill takes effect after December 31, 1989, and gradually over the period January 1, 1990, through December 31, 1994;

(2) Any duty elimination provided in the bill does not take effect prior to January 1, 1995; and

(3) The consultations with Congressional committees occur at least 90 days, rather than 30 days, prior to submission of the bill.

Section 4 provides the President authority to proclaim the elimination of duties on the list of import-sensitive articles as of January 1, 1995, and thereby fulfill U.S. international obligations under the Agreement, without any further Congressional action. However, section 5(c)(2) enables the President to seek legislative authority under the expedited, no amendment procedures to phase in duty reductions after an initial five-year "freeze," as an alternative to immediate duty elimination in the tenth year. As indicated in the statement of administrative action, it is the Administration's intention to seek the advice of the U.S. International Trade Commission on these articles before submitting any such legislation.

Subsection (d) provides that neither the entry into force of the Agreement for the United States, nor enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or U.S. laws.

SECTION 6. TERMINATION

Section 6 waives the requirement of section 125(a) of the Trade Act of 1974 that every trade agreement entered into under that Act shall be subject to termination or withdrawal within three years, or thereafter upon no more than six months' notice. Article 23 of the Agreement itself provides for termination by either party after written notification and the expiration of twelve months.

SECTION 7. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN ISRAELI PRODUCTS

In order to implement Article 15 of the Agreement, section 7 of H.R. 2268 authorizes the President to waive Buy American restrictions on products or services of Israel having a contract value of \$50,000 or more which are presently covered for Federal procurement by the United States under the GATT Agreement on Government Procurement but for the SDR 150,000 threshold (about \$156,000) under Article I(1)(b) of that Agreement.

The United States and Israel are both parties to the GATT Agreement on Government Procurement, approved by Congress

under the Trade Agreements Act of 1979. Parties to that Agreement on a reciprocal basis waive their Buy National restrictions on procurement by specific government agencies on contracts with a value of 150,000 Special Drawing Rights (SDRs) or more (currently about \$156,000) of a broad range of goods not excluded from the Agreement by that signatory or of services incidental to the purchase of such goods.

U.S. implementing legislation under Title III of the Trade Agreements Act of 1979 authorizes the President to waive various Buy American restrictions on "eligible products" procured by Federal Government agencies covered by the Agreement from other signatory countries. Section 7 of H.R. 2268 amends the definition of "eligible product" under paragraph (4) of section 308 of the Trade Agreements Act of 1979 to lower the threshold contract value from SDR 150,000 to \$50,000 or more with respect to procurement of products from Israel on which the President is currently authorized by section 301 of that Act to waive Buy American restrictions.

As specified in Article 15 of the Agreement and in the accompanying statement of administrative action, the lower threshold is strictly limited to purchases by U.S. Federal agencies that would be subject to the GATT Agreement but for the SDR 150,000 threshold in that Agreement. Article 15 does not apply to U.S. purchases that are exempt from GATT Agreement coverage at the time the Agreement with Israel enters into force for reasons other than the SDR 150,000 threshold. Therefore, the amended authority under section 7 lowering the threshold cannot be used to waive Buy American restrictions on purchases currently excluded from the GATT Agreement, such as articles covered by the Berry Amendment requirement for Department of Defense purchase solely from U.S. sources (e.g., textiles, clothing, footwear), small and minority business and labor surplus area set asides, hand tool preferences, prison and blind made good exceptions, Department of Agriculture purchases for farm support and human feeding programs, cargo transportation preferences, construction contracts, purchases by Federal agencies not subject to the GATT Agreement, and purchases by State or local governments. Should the coverage of U.S. or Israeli government entities or products subject to the GATT Agreement be broadened through negotiations, the coverage of the Agreement with Israel would not be affected except by amendment.

SECTION 8. TECHNICAL AMENDMENTS

Section 8 makes five technical corrections to the Trade and Tariff Act of 1984 and to the Trade Act of 1974 related to the authorization and administration of the Agreement.

Paragraph (1) of subsection (a) amends section 402(a) of the Trade and Tariff Act of 1984 to clarify that the rule-of-origin requirements have the status of a free-standing provision of U.S. domestic law in addition to providing criteria for inclusion in the Agreement with Israel. With this amendment the rules of origin relating to this Agreement would have a legal standing under U.S. statute which is comparable to that of the rules of origin applicable to other existing preferential arrangements, such as the Generalized System of Preferences and the Caribbean Basin Initiative.

Paragraph (2) of subsection (a) amends section 404(e) of the Trade and Tariff Act of 1984 to bring the coverage of products included under the emergency import relief provisions for agricultural perishables into conformity with the coverage of the identical provisions under section 213(f) of the Caribbean Basin Economic Recovery Act and to update references to current item numbers in the Tariff Schedules of the United States (TSUS).

Paragraph (3) of subsection (a) redesignates the misnumbered section 401 in the Trade and Tariff Act of 1984 as section 405.

Paragraph (1) of subsection (b) amends section 102(b)(3) of the Trade Act of 1974, as added by section 401(a) of the Trade and Tariff Act of 1984, to clarify that the prohibition on extension of any trade benefit under a trade agreement being extended to any other country applies to trade agreements providing for the elimination or reduction of any U.S. duty, as opposed to agreements on nontariff barriers.

Finally, paragraph (2) of subsection (b) amends Title V of the Trade Act of 1974 relating to GSP so that future changes in the program, including conforming changes to the TSUS to implement the Free Trade Area Agreement with Israel, can be made either by Executive order or Presidential proclamation rather than simply by Executive order as is currently required. This amendment will allow all changes in the TSUS to implement this Agreement and any future agreements to be made in one document by Presidential proclamation.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 2268 was ordered favorably reported by the Committee on Ways and Means by voice vote.

OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes, on the basis of extensive review of U.S.-Israel trade relations and of the provisions of the Agreement, including consideration of the authorizing legislation in the 98th Congress, consultations with the Office of the U.S. Trade Representative during the negotiations and on implementation, and hearing testimony, that establishment of a free trade area between the United States and Israel under the provisions of the implementing bill would be in the economic interest of both countries.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

**BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES
OF THE CONGRESSIONAL BUDGET OFFICE**

In compliance with clause 7(a) of rule XIII and with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2268 does not provide new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rule XIII and with clause 2(1)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 2268 and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 6, 1985.

Hon. DAN ROSTENKOWSKI,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined H.R. 2268, a bill to approve and implement the free trade area agreement between the United States and Israel, as approved by the committee on May 2, 1985. The bill ratifies the agreement, signed April 22, that would lift tariffs and other trade barriers between the two countries over the next ten years.

Under the agreement, duties on some goods would be eliminated immediately, other duties would be phased out over five or ten years, and the remaining duties would be frozen until 1990 and become duty free in 1995. The first stage of tariff reductions would become effective on September 1, 1985. The agreement also provides for the creation of a joint committee to supervise the implementation of the agreement.

We have prepared the following estimate of the customs duties collections forgone as a result of the agreement.

Fiscal year:	<i>Millions</i>
1985	-\$0.3
1986	-8.1
1987	-10.1
1988	-11.5
1989	-13.6
1990	-15.2

If you would like further information on the estimate, we would be happy to provide it.

With best wishes.

Sincerely,

ROSEMARY MARCUSS
(For Rudolph G. Penner).

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2268 would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

SEC. 308. DEFINITIONS.

As used in this title—

(1) **AGREEMENT.**—The term “Agreement” means the Agreement on Government Procurement referred to in section 2(c) of this Act, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) **CIVIL AIRCRAFT.**—The term “civil aircraft and related articles” means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft, whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) **DEVELOPED COUNTRIES.**—The term “developed countries” means countries so designated by the President.

(4) **ELIGIBLE PRODUCTS.**—

(A) **IN GENERAL.**—The term “eligible product” means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) **RULE OR ORIGIN.**—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) **LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.**—The term “eligible product” includes a product or service of Israel having a contract value of \$50,000 or

more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.

(5) **INSTRUMENTALITY.**—The term “instrumentality” shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(b) **LEAST DEVELOPED COUNTRY.**—The term “least developed country” means any country on the United Nations General Assembly list of least developed countries.

(7) **MAJOR INDUSTRIAL COUNTRY.**—The term “major industrial country” means any such country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.

TRADE AND TARIFF ACT OF 1984

* * * * *

TITLE IV—TRADE WITH ISRAEL

* * * * *

SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

(a)(1) [Any trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 may provide for the reduction or elimination of any duty imposed by the United States with respect to any article only if—] *The reduction or elimination of any duty imposed on any article by the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall apply only if—*

(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

(B) that article is imported directly from Israel into the customs territory of the United States; and

(C) the sum of—

(i) the cost of value of the materials produced in Israel, plus

(ii) the direct costs of processing operations performed in Israel,

is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (C).

(2) No article may be considered to [be an eligible Israeli article] *meet the requirements of paragraph (1)(A)* by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

* * * * *

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 201 of the Trade Act of 1974 regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 and alleges injury from imposts of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

(b) Within 14 days after the filing of a petition under subsection (a)—

(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 or publish a notice of his determination not to take emergency action.

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the proclamation of import relief under section 202(a)(1) of the Trade Act of 1974;

(2) on the day the President makes a determination under section 203(b)(2) of such Act not to impose import relief;

(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President; or

(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(e) For purposes of this section, the term "perishable product" means any—

(1) live plant provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, hereinafter referred to as the "TSUS");

(2) **【vegetable provided for in】** *fresh or chilled vegetables provided for in items 135.03 through 138.46 of schedule 1, part 8, of the TSUS;*

(3) fresh mushroom provided for in item 144.10 of the TSUS;

(4) **【edible nut or fruit provided for in schedule 1, part 9,】** *fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21, and 149.50 of the TSUS;*

(5) fresh cut flower provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) concentrated citrus fruit *juice* provided for in items 156.25 and 165.35 of the TSUS.

(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall affect fees imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. **【406.】** 405. CONSTRUCTION OF TITLE.

Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1), nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any Israeli articles of section 232 of the Trade Expansion Act of 1962, section 337 of title VII of the Tariff Act of 1930, chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974, or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.

* * * * *

TRADE ACT OF 1974

* * * * *

TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

* * * * *

(a) * * *

(b)(1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such bar-

riers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 301 of the Trade Act of 1974 and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country *that provides for the elimination or reduction of any duty imposed by the United States.*

* * * * *

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or *Presidential proclamation* by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President

designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order or *Presidential proclamation* for that purpose or by issuing an Executive order or *Presidential proclamation* which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which a free area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or *Presidential proclamation* provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(4) For purposes of this title, the term "internationally recognized worker rights" includes—

- (A) the right of association;
- (B) the right to organize and bargain collectively;
- (C) a prohibition on the use of any form of forced or compulsory labor;
- (D) a minimum age for the employment of children; and
- (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(b) No designation shall be made under this section with respect to any of the following:

Australia	Japan
Austria	Monaco
Canada	New Zealand
Czechoslovakia	Norway
European Economic Community members states	Poland
Finland	Republic of South Africa
Germany (East)	Sweden
Iceland	Switzerland
	Union of Soviet Socialist Republics

In addition, the President shall not designate any country a beneficiary developing country under this section—

- (1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him, that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 or beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, or otherwise seize ownership or control of such property, including patents, trademarks, or copyrights,

unless—

(D) the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of In-

vestment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812) produced, processed, or transported in such country from entering the United States unlawfully;

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(7) if such country aids or abets, by granting sanctuary from prosecution to any individual or group which has committed an act of international terrorism; and

(8) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Paragraphs (4), (5), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) General headnote 3(a) to the Tariff Schedules of the United States (19 U.S.C. 1202) (relating to products of insular possessions) is amended by adding at the end thereof the following new paragraph:

"(iii) Subject to the limitations imposed under sections 503(b) and 504(c) of the Trade Act of 1974, articles designated eligible articles under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such articles imported from a beneficiary developing country under title V of such Act."

(e)(1) The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The President may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) The President shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. Before any such list is furnished to the Commission, there shall be in effect an Executive order or *Presidential proclamation* under section 502 designating beneficiary developing countries. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the President shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order or *Presidential proclamation*.

(b) The duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2) If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection.

(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

(B) watches,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a)(1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect to any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(2) The President shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 501 and 502(c), and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

(b) The President shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the Presi-

dent issues an Executive order or *Presidential proclamation* revoking his designation of such country under section 502.

(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to \$25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 4, 1987, and periodically thereafter, the President shall conduct a general review of eligible articles based on the considerations described in section 501 or 502(c).

(B) If, after any review under subparagraph (A), the President determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the President may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the President—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the President shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this paragraph shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(D)(i) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(ii) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered from any beneficiary developing country during any calendar year beginning after 1984 which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year if for the preceding calendar year such beneficiary developing country—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of \$5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this title during that year.

(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

(I) entered duty-free under this title during such calendar year; and

(II) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

(4) Except in any case to which paragraph (2)(B) applies, the President may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the President determines and publishes in the Federal Register that, with respect to such country—

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the President determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The President shall—

(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to \$5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

(f)(1) If the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) subsection (c)(1)(B) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" for "50 percent", and

(B) such country shall not be treated as a beneficiary developing country under this title after the close of such 2-year period.

(2)(A) For purposes of this subsection, the term "applicable limit" means the sum of—

(i) \$8,500, plus

(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

(B) The amount determined under this subparagraph for the determination year is an amount equal to—

(i) \$8,500, multiplied by

(ii) the percentage determined by dividing—

(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Com-

merce) for the determination year over the gross national product of the United States for 1984, by

(II) the gross national product for 1984.

SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after July 4, 1993.

(b) On or before January 4, 1990, the President shall submit to the Congress a full and complete report regarding the operation of this title.

(c) The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

* * * * *